

AMENDED IN ASSEMBLY MAY 28, 2004

AMENDED IN ASSEMBLY SEPTEMBER 8, 2003

SENATE BILL

No. 494

Introduced by Senator Escutia

February 20, 2003

An act to amend *Section 23004.1 of the Government Code, and to amend Section 14124.791 of the Welfare and Institutions Code, relating to Medi-Cal health services.*

LEGISLATIVE COUNSEL'S DIGEST

SB 494, as amended, Escutia. ~~Medi-Cal Health services.~~

~~Existing~~

(1) Existing law prescribes procedures under which a provider, beneficiary, or the Director of Health Services may bring an action or claim against a 3rd party who is liable for services rendered to a beneficiary under the Medi-Cal program. Existing law—specifies provides that, subject to a prior right of recovery of the director, a provider who has rendered services to a beneficiary because of an injury for which a 3rd party is liable and who has received payment under the Medi-Cal program shall be entitled to file a lien for the services provided thereto against any judgment, award, or settlement obtained by the beneficiary or the director against that 3rd party if the provider has made a full reimbursement of any fees paid to the department for those services.

This bill would—create—specified revise these 3rd party claim procedures for the reimbursement of costs if an. The bill would revise the provider lien procedures to instead authorize the lien for the reasonable and necessary charges for services provided to the

beneficiary against the portion of any judgment, award, or settlement relating to past medical expenses in the action or claim ~~is brought against a 3rd party, as specified.~~

(2) Existing law provides procedures under which, in any case in which a 3rd person is liable to pay for health services provided by a county to an injured or diseased person, the county may recover from that 3rd person or be subrogated to any right or claim that the injured or diseased person, including identified parties in interest, have against that 3rd person. Under these procedures the county's right of action abates during the pendency of an action brought for damages against the 3rd person by the injured or diseased person and continues as a first lien against any judgment recovered by the injured or diseased person.

This bill would provide that the county's right of action would continue under this provision as a first lien, in addition, against any settlement or compromise recovered by the injured or diseased person. The bill would also provide that a county enforcing a lien under these provisions is a provider for purposes of paragraph (1).

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 23004.1 of the Government Code is
2 amended to read:

3 23004.1. (a) Subject to ~~the provisions of~~ Section 23004.3, in
4 any case in which the county is authorized or required by law to
5 furnish hospital, medical, surgical, or dental care and treatment,
6 including prostheses and medical appliances, to a person who is
7 injured or suffers a disease, under circumstances creating a tort
8 liability upon some third person to pay damages therefor, the
9 county shall have a right to recover from ~~said~~ that third person the
10 reasonable value of the care and treatment so furnished or to be
11 furnished, or shall, as to this right, be subrogated to any right or
12 claim that the injured or diseased person, his *or her* guardian,
13 personal representative, estate, or survivors has against ~~such~~ that
14 third person to the extent of the reasonable value of the care and
15 treatment so furnished or to be furnished.

16 (b) The county may, to enforce ~~such~~ rights established under
17 subdivision (a), institute and prosecute legal proceedings against
18 the third person who is liable for the injury or disease in the

1 appropriate court, either in its own name or in the name of the
 2 injured person, his *or her* guardian, personal representative, estate,
 3 or survivors. ~~Such~~ *This* action shall be commenced within the
 4 period prescribed in Section 340 of the Code of Civil Procedure.
 5 In the event that the injured person, his *or her* guardian, personal
 6 representative, estate, survivors, or either of them brings an action
 7 for damages against the third person who is liable for the injury or
 8 disease, the county's right of action shall abate during the
 9 pendency of ~~such~~ *that* action, and continue as a first lien against
 10 any judgment, *settlement, or compromise* recovered by the injured
 11 or diseased person, his *or her* guardian, personal representative,
 12 estate, or survivors, against the third person who is liable for the
 13 injury or disease, to the extent of the reasonable value of the care
 14 and treatment so furnished or to be furnished. When the third
 15 person who is liable is insured, the county shall notify the third
 16 person's insurer, when known to the county, in writing of the lien
 17 within 30 days following the filing of the action by the injured or
 18 diseased person, his *or her* guardian, personal representative,
 19 estate, or survivors, against the third person who is liable for the
 20 injury ~~or disease; provided, however, that~~ *disease. However,*
 21 failure to so notify the insurer shall not prejudice the claim or cause
 22 of action of the injured or diseased person, his *or her* guardian,
 23 personal representative, estate, or survivors, or the county.

24 *SEC. 2.* Section 14124.791 of the Welfare and Institutions
 25 Code is amended to read:

26 14124.791. (a) The Legislature finds and declares that ~~the~~
 27 ~~cost of health care continues to escalate in California and that~~
 28 ~~health care providers are routinely not compensated or are~~
 29 ~~undercompensated for the care they provide. The Legislature~~
 30 ~~further finds and declares that providers of emergency medical~~
 31 ~~care furnish a vital public service of great benefit to all~~
 32 ~~Californians by furnishing emergency medical services to all~~
 33 ~~without regard to the ability to pay, as required by existing law. The~~
 34 ~~Legislature hereby recognizes and declares the long-standing~~
 35 ~~public policy of this state for tortfeasors and other responsible third~~
 36 ~~parties to bear the burden of paying for the medical care resulting~~
 37 ~~from the injuries they cause~~ *Legislature further finds and declares*
 38 *that ensuring that Medi-Cal providers obtain reasonable*
 39 *compensation helps alleviate the severe access problems already*
 40 *experienced by Medi-Cal beneficiaries. It is the intent of the*

1 Legislature to respond to the invitation of the California Supreme
2 Court in *Olszewski v. Scripps Health* (2003) 30 Cal.4th 798, to
3 permit providers to recover their reasonable and necessary charges
4 while protecting Medi-Cal beneficiaries' rights to recover full
5 damages from responsible third-party tortfeasors, and to preclude
6 tortfeasors from receiving the benefit of the Medi-Cal program at
7 the expense of providers, beneficiaries, and taxpayers. *The*
8 *Legislature further finds and declares that granting providers lien*
9 *recovery rights increases a provider's incentive to notify the State*
10 *Department of Health Services of the existence of third-party*
11 *liability. This in turn increases the number of cases in which the*
12 *department is reimbursed by providers who can collect for services*
13 *rendered from responsible third parties and will result in savings*
14 *to the state.*

15 (b) Subject to the director's prior right of recovery, a provider
16 who has rendered services to a beneficiary because of an injury for
17 which a third party is or may be liable and who has received
18 payment under the Medi-Cal program shall be entitled to a lien for
19 the reasonable and necessary charges for services provided to the
20 beneficiary against the portion of any judgment, award, or
21 settlement relating to past medical expenses obtained by the
22 beneficiary or the director against that third party. A provider may
23 recover upon the lien only if the provider has made a full
24 ~~reimbursement of any fees paid by the department for those~~
25 ~~services.~~ *reimbursement to the director of any payment for those*
26 *services within 35 days of the final determination of the amount the*
27 *provider will be reimbursed on the lien.*

28 (c) If either the beneficiary or the director brings an action or
29 claim against the third party, the party bringing the action shall,
30 within 30 days of bringing the action, give written notice to any
31 provider who is ~~entitled to~~ *eligible to file* a lien under subdivision
32 ~~(a)~~ (b) of, to the extent known, the name and address of each third
33 party and the name and address of each insurance carrier that has
34 insured the third party against the liability and, to the extent
35 applicable, the name of the *action and* court or state or local agency
36 in which the action or claim is brought. Notice shall be given by
37 personal service or *registered* mail, and proof of service shall be
38 filed in the action or claim.

39 (d) (1) The lien shall become effective when the provider
40 sends a written notice containing the name and address of the

injured person, the name and location of the provider, and the amount claimed as reasonable and necessary charges, to the beneficiary and the beneficiary's attorney or legal representative, if known. The amount claimed in the notice is rebuttably presumed to constitute the reasonable value of medical services furnished by the provider and that amount, or so much thereof as can be satisfied out of 50 percent of the moneys due under any final and, if known at the time the notice is given, the beneficiary's attorney.

(2) If notice is given to the beneficiary and the provider subsequently has notice that the beneficiary has legal representation, the provider shall give written notice to the beneficiary's attorney. The failure to give notice to the beneficiary's attorney pursuant to this paragraph shall not invalidate the lien.

(3) The written notice required by this subdivision shall be sent by registered mail with proof of service.

(4) The amount claimed in the notice, or so much of that amount as can be satisfied from any final judgment, compromise, or settlement agreement after paying any ~~prior~~ other liens, shall be deemed to be included within any judgment, award, or settlement unless the judgment, award, or settlement expressly allocates a lesser amount. Any recovery on ~~the any provider~~ lien shall be limited to that portion of the judgment, award, or settlement constituting compensation for past medical expenses.

~~(e) If a lien has been asserted pursuant to this section, the~~

(e) The amount paid under the Medi-Cal program shall be inadmissible in any action or claim against the third party and the third party may not use the amount paid by Medi-Cal to reduce the amount of its liability. This provision overturns *Hanif v. Housing Authority of Yolo County* (1988), 200 Cal.App.3d 635, to the extent it is inconsistent herewith. This provision is consistent with the law as stated in *Helfend v. Southern California Rapid Transit District* (1970), 2 Cal.3d 1.

(f) If the beneficiary has filed a third-party claim, the court where the action was filed shall have jurisdiction over a dispute between the provider and the beneficiary regarding the amount of a lien asserted pursuant to this section that is based upon an allocation of damages contained in a ~~settlement judgment~~, settlement, or compromise of the third-party claim. If no third-party claim or action has been filed, any superior court in

1 California where venue would have been proper had a claim or
2 action been filed shall have jurisdiction over the motion. The
3 motion may be filed as a special motion and treated as an ordinary
4 law and motion proceeding and subject to regular motion fees. *The*
5 *reimbursement determination motion shall be treated as a special*
6 *proceeding of a civil nature pursuant to Part 3 (commencing with*
7 *Section 1063) of the Code of Civil Procedure.* When no action is
8 pending, the person making the motion shall be required to pay a
9 first appearance fee. When an action is pending, the person making
10 the motion shall pay a regular law and motion fee.

11 (g) In any motion filed pursuant to subdivision (f), all of the
12 following shall apply:

13 (1) The provider asserting a lien pursuant to this section and the
14 beneficiary shall be made a party to the motion and either the
15 beneficiary or the provider may file the motion. In cases where the
16 third-party claim was tried to a verdict or judgment, the motion
17 shall be heard by the trial judge, if available. In cases where an
18 action has been filed and settled or otherwise resolved prior to
19 verdict or judgment, the motion shall be heard by the judge to
20 whom the matter was assigned, or, if no judge was assigned or the
21 assigned judge is unavailable, in the regular law and motion
22 department or by a judge assigned to hear the matter. When no
23 action has previously been filed, the motion shall be assigned and
24 heard pursuant to the regular law and motion procedures in the
25 court where the motion is filed.

26 (2) The beneficiary shall produce to the provider a true and
27 correct copy of those portions of the settlement document upon
28 which the asserted allocation is based that are relevant to the
29 determination motion, prior to the filing of the motion.

30 (3) If the beneficiary is the moving party, notice of the motion
31 shall be addressed to the provider at the provider's address as
32 shown on the notice of lien and to any counsel representing the
33 provider on the lien, if known. If the provider is the moving party,
34 notice of the motion shall be addressed to the beneficiary at the
35 beneficiary's last known address and to the beneficiary's counsel,
36 if known. If the beneficiary is not represented by counsel, the
37 notice of motion shall be mailed to the beneficiary by registered
38 mail. Proof of service in compliance with this subdivision shall be
39 filed with the court.



(4) If the beneficiary is represented by counsel, the beneficiary shall bear the burden of proof as to the fairness of the allocation and the burden of producing evidence, by declaration or other written form, as to the manner in which the allocation was made and the evidentiary basis for the allocation. If the beneficiary is not represented by counsel, the party making the motion shall bear the burden of proof as to the fairness of the allocation and the burden of producing evidence, by declaration or other written form, as to the manner in which the allocation was made and the evidentiary basis for the allocation.

(5) *In determining the fairness of the allocation, the court shall consider the relationship of damages for past medical expenses to the total damages claimed and the total amount of the settlement.*

(6) If a settlement has been reached contingent upon the amount of a lien asserted pursuant to this section, the settlement remains contingent unless the beneficiary accepts the allocation made by the court in its decision on the motion, *within 30 days of the notice of entry of the court's findings, decision, or order.*

~~(6)–~~

(7) The court shall issue its findings, decision, and order, which shall be considered the final determination, ~~subject to any appeal, of the parties' rights and obligations with respect to the provider's lien, unless the beneficiary does not accept the allocation made by the court pursuant to paragraph (5).—lien, subject to reconsideration as authorized in paragraph (8).~~

(8) *If the beneficiary does not accept the settlement, any party may subsequently seek reconsideration of the court's findings upon application to modify the prior findings, decision, or order, based on new or different facts or circumstances. The application shall include an affidavit showing what application was made before, when, and to what judge, what order or decision was made, and what new or different facts or circumstances are claimed to exist. Upon reconsideration, the court may modify the allocation in the interest of fairness and for good cause.*

(h) No claim authorized by this section shall be permitted to the extent that the claim would reduce the director's right to recover pursuant to Section 14124.78. However, the provider's reimbursement to the department pursuant to subdivision (b) shall extinguish the director's claim for the same services.

(i) Any person, firm, or corporation, including, but not limited to, an insurance carrier, who receives notice of a lien asserted pursuant to this section and who makes any payment to the injured person, or to his or her attorney, heirs, or legal representative, for the injuries the beneficiary sustained, after receipt of this notice, without paying to the provider the amount the provider is entitled to receive as payment on its lien, shall be liable to the provider for that amount.

(j) For purposes of this section, “reasonable and necessary charges” means the usual, customary, and reasonable charges for medical services in the geographic region where the services were provided, when these services were medically necessary to treat the injuries allegedly caused by a third-party tortfeasor. The amount paid to the provider by Medi-Cal shall not be considered in the determination of the amount of a provider’s lien or in the determination of the amount of the third-party tortfeasor’s liability to the beneficiary.

(k) When a final judgment in the third-party claim includes a special finding by a judge, jury, or arbitrator that the beneficiary was partially at fault, the provider’s lien shall be reduced by the same comparative fault percentage by which the beneficiary’s recovery *for past medical expenses* was reduced.

(l) At the request of the beneficiary, the court or arbitrator in the third-party claim shall provide for special findings with respect to *compensation allocated* to past medical expenses.

(m) The provider’s lien shall be reduced by the pro rata amount commensurate with the beneficiary’s reasonable attorney’s fees and costs in accordance with the common fund doctrine. *The amount of the reduction in the provider’s lien pursuant to this subdivision shall accrue solely to the benefit of the beneficiary and shall not increase attorney’s fees and costs payable to the beneficiary’s attorney.*

(n) The amount claimed by the beneficiary, or his or her heirs or personal representative in case of his or her death, as the provider’s reasonable and necessary charges in securing a judgment, settlement, award, or compromise in the third-party claim, shall preclude the beneficiary, or his or her heirs or personal representative in case of his or her death, from challenging the reasonableness and necessity of those charges in any dispute between the provider and the beneficiary regarding the lien, unless

1 a lesser amount has been specifically allocated in a judgment,
2 settlement, award, or compromise.

3 (o) If any provision of this section, or the application of any
4 provision of this section to any person, firm, corporation, or other
5 entity or to any circumstance or situation, shall be held invalid, the
6 remaining provisions of this section shall not be affected thereby,
7 and shall be given effect.

8 (p) *Subdivision (e) shall have no effect on the rights of parties*
9 *or public agencies under Section 985 of the Government Code.*

10 (q) *As used in this section “provider” shall include, but is not*
11 *limited to, a county enforcing a lien pursuant to Section 23004.1*
12 *of the Government Code.*

